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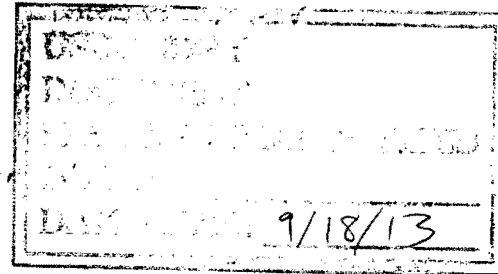
1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
 4 DAVID FLOYD, LALIT CLARKSON, DEON DENNIS,
 5 and David Ourlicht, individually and on
 6 behalf of a class of all others similarly
 7 situated;

PLAINTIFFS,

-against-

Case No:
 08cv01034 (SAS)



8 THE CITY OF NEW YORK; NEW YORK CITY POLICE
 9 COMMISSIONER RAYMOND KELLY, in his individual
 10 and official capacity; MAYOR MICHAEL BLOOMBERG,
 11 in his individual and official capacity; NEW
 12 YORK CITY POLICE OFFICER RODRIGUEZ, in his
 13 individual capacity; NEW YORK CITY POLICE
 14 OFFICER GOODMAN, in his individual capacity;
 15 NEW YORK CITY POLICE OFFICER JANE DOE, in her
 16 individual capacity; NEW YORK CITY POLICE
 17 OFFICER ERIC HERNANDEZ, Shield # 15957, in his
 18 individual capacity; NEW YORK CITY POLICE
 19 OFFICER CORMAC JOYCE, Shield # 31274, in his
 20 individual capacity; NEW YORK CITY POLICE
 21 SERGEANT JAMES KELLY, Shield # 92145, in his
 22 individual capacity; NEW YORK CITY POLICE
 23 OFFICER LUIS PICHARDO, Shield # 00794, in his
 24 individual capacity; NEW YORK CITY POLICE
 25 OFFICER ANGELICA SALMERON, Shield # 7116, in
 her individual capacity; NEW YORK CITY POLICE
 OFFICER MICHAEL COUSIN HAYES, Shield # 3487,
 in his individual capacity; NEW YORK CITY
 POLICE OFFICER CHRISTOPHER MORAN, in his
 individual capacity; and NEW YORK CITY POLICE
 OFFICERS JOHN DOES #1 through #11, in their
 individual capacities;

DEFENDANTS.

DATE: January 15, 2013

TIME: 3:00 P.M.

(Continued on next page.)

The Clerk of the Court
 is directed to
 docket this transcript
 of the January 15,
 2013 conference
 in Floyd v. City of
New York, 08 Civ.
1034.

Shira A. Scheindlin
 Shira A. Scheindlin,
 USDT

9/18/13

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DATE: January 15, 2013

TIME: 3:00 P.M.

CONTINUED DEPOSITION of the Plaintiff,
CLIVE LINO, taken by the Defendants, pursuant to a Notice
and to the Federal Rules of Civil Procedure, held at the
offices of The New York City Law Department, 100 Church
Street, New York, New York 10007, before Sophia Toribio, a
Notary Public of the State of New York.

1 A P P E A R A N C E S:

2

3 CENTER FOR CONSTITUTIONAL RIGHTS
4 Attorneys for the Plaintiffs
5 666 Broadway, Seventh Floor
6 New York, New York 10012
7 BY: DARIUS CHARNEY, ESQ.

6

7 MICHAEL A. CARDOZO, ESQ.
8 CORPORATION COUNSEL
9 NEW YORK CITY LAW DEPARTMENT
10 Attorney for the Defendants
11 100 Church Street
12 New York, New York 10007
13 BY: MORGAN D. KUNZ, ESQ.
14 File #: 2008-003588
15 Control #: KKK06537

12

13 ALSO PRESENT:
14 HEIDI GROSSMAN, ESQ.
15 SUZANNA PUBLICKER, ESQ.

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C. LINO

1 MR. CHARNEY: He's not going to answer that
2 question because Mr. Dunn instructed me not to
3 let him answer that question. If you want to
4 speak to Mr. Dunn about it, feel free. I have no
5 objection to that.

6 MR. KUNZ: Okay.

7 MR. CHARNEY: You could ask him, it might
8 help, if any of the three stops that you've
9 already asked him about in this deposition are
10 part of that lawsuit. You can ask him that
11 question.

12 MR. KUNZ: I appreciate the offer. I think
13 at this point, we have the directions not to
14 answer for the main issues that we need to call
15 the judge on, so I think we should go ahead and
16 do that.

17 MR. CHARNEY: Go ahead.

18 (Whereupon, at 4:00 P.M., a conference call
19 was placed to Judge Shira Scheindlin.)

20 JUDGE SCHEINDLIN: Hello.

21 MR. KUNZ: Hello, Your Honor. This is
22 Morgan Kunz from the City of New York. How are
23 you?

24 JUDGE SCHEINDLIN: Yes, fine, thank you.
25 Yourself?

C. LINO

1 MR. KUNZ: Good. We are on the record here
2 on our end. With me is Ms. Suzanna Publicker and
3 Ms. Heidi Grossman for the City of New York, and
4 Mr. Charney is here for the Plaintiffs.

5 JUDGE SCHEINDLIN: Okay.

6 MR. KUNZ: We are in the deposition of Clive
7 Lino and there are two specific issues that have
8 come up. One is in regard to, you may recall
9 from a recent conference, that Mr. Lino has been
10 stopped numerous times, I believe upwards of
11 20 times, and he's indicated that at the trial,
12 he only intends to speak about three specific
13 stops.

14 JUDGE SCHEINDLIN: All right.

15 MR. KUNZ: We want to inquire into the other
16 stops. And the reason we want to inquire into
17 those stops is because Mr. Lino does intend to
18 testify at the trial that he has been stopped on
19 numerous times, upwards of 20, and he wants to
20 talk about the effect that those repeated stops
21 have had on him.

22 JUDGE SCHEINDLIN: What does that mean, the
23 effects? I thought we discussed that issue
24 before and now that there is no request for
25 damages, what does it matter whether he, you

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1 know, has a psychological impact or a backache or
2 can't sleep? What does that matter, the effects
3 on him? I thought we talked about that.

4 MR. CHARNEY: Your Honor, this is
5 Mr. Charney. I guess that might actually resolve
6 the issue. One of the issues that we believe is
7 relevant to injunctive relief is the global
8 impact that the stop-and-frisk practices have on
9 New Yorkers.

10 JUDGE SCHEINDLIN: Yes, but I don't think we
11 need to know the individual impact. I think the
12 law assumes that a victim of any unconstitutional
13 behavior -- let's just take a First Amendment
14 case, to remove it from here, that's presumed
15 injury. I've written other decisions in other
16 kinds of cases. Any limitation of your First
17 Amendment right, for example, is an automatic
18 injury. So any imposition of your Fourth
19 Amendment right is an automatic injury or your
20 Fifth Amendment right or Sixth Amendment right.
21 I think injury is presumed when someone is
22 deprived of a constitutional right. That's my
23 understanding of the law. You might know more
24 about that than I do, but.

25 MR. CHARNEY: All right. So, I guess is it

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1 your ruling then that he is not permitted to
2 testify about the impact that being stopped
3 repeatedly has had on him or his view of the
4 police department or anything like that?

5 JUDGE SCHEINDLIN: I don't see the relevance
6 of that with the issues in front of me. I agree
7 with you that you need to prove injury. But when
8 you go back to your office and you do the
9 research, if you think I'm not right -- I know
10 I've written as to the deprivation of
11 constitutional right is, per se, an injury.

12 MR. CHARNEY: I agree with you. I guess the
13 only -- and I will just add this one comment and
14 then I think we will maybe resolve this, with
15 respect to injunctive relief and the need for
16 certain forms of injunctive relief. One of the
17 issues obviously for us is the relationship
18 between the community and the police department
19 and whether or not that's a cooperative
20 relationship, a distrustful relationship and that
21 kind of issue, and we believe that this testimony
22 about how being stopped repeatedly, how it
23 impacts his view of the police or his attitude
24 toward the police. We think it may be relevant
25 to that question.

C. LINO

1 JUDGE SCHEINDLIN: If he's stopped three
2 times or 20 times, I think you're qualified to
3 say how that affects your view of the police in
4 your neighborhood. I mean, I had had similar
5 testimony that the people are, whatever, when
6 they see the police, they are afraid or there is
7 no one to turn to because of the police stopping
8 them. I mean, you read the last one.

9 MR. CHARNEY: Yes.

10 JUDGE SCHEINDLIN: So, general testimony
11 like that doesn't depend on whether it's three or
12 if it's 20, but we may be getting a little far
13 afield from what Mr. Kunz would like to discuss.

14 MR. CHARNEY: Okay.

15 MR. KUNZ: A little bit, Your Honor.
16 Essentially, we just want an order from Your
17 Honor saying that the Plaintiff, Mr. Lino in
18 particular, will only be allowed to testify about
19 the three particular stops and he will not
20 testify even about the fact that he's been
21 stopped other times.

22 JUDGE SCHEINDLIN: No, that I can't do. He
23 certainly can say I've been stopped many, many
24 other times over a period of ten years or
25 five years, whatever the fact is. I think he can

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1 say that generality and then he can say, the next
2 generality, all of these stops collectively makes
3 me whatever it is, afraid of the police or
4 antagonistic of the police or distrustful,
5 whatever word he wants to use. But if he does
6 that, then what do you think you should be able
7 to ask?

8 MR. KUNZ: Then I think we should be able to
9 explore the circumstances of those specific
10 stops.

11 JUDGE SCHEINDLIN: Why? In other words,
12 he's still making the general statement that I've
13 been stopped X number of times over X number of
14 years, I described three of them. There is no
15 need to describe the other 17. The fact of the
16 matter is I've been stopped 20 times. I have
17 this and this view of the police in my community.
18 It's a generality. Why would I want to listen,
19 as the judge, the trier of the facts, to 17
20 descriptions of 17 other stops that are not in
21 dispute? Unless your point is, okay, five of
22 them were based on reasonable suspicion or what,
23 but that still leaves 15 that weren't, according
24 to him, according to his version.

25 MS. GROSSMAN: Your Honor, this is Heidi

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1 Grossman. I think in terms of going to the
2 details of all the stops, I understand your
3 concern, but the witness has already said that
4 there are many, you know, we went through many
5 stops, a handful of stops that he didn't
6 remember. So even if we can go through just to
7 say do you remember, do you not remember? What
8 you remember, was it constitutional, was it not?
9 I think we would like to be able --

10 JUDGE SCHEINDLIN: He's no judge of
11 constitutional or not. All he can tell you is
12 what he remembers is either facts of the stops.
13 That would be I don't know how many of the other
14 17 or so he would even remember the facts of.

15 MR. CHARNEY: Your Honor, can I interject
16 for a second on that question?

17 JUDGE SCHEINDLIN: Yes.

18 MR. CHARNEY: Because I want to go back to
19 something you said, a very important thing you
20 said I believe on December 11th about the length
21 of these depositions and the requirement that the
22 parties use common sense.

23 JUDGE SCHEINDLIN: Yes, I still would like
24 that. That's why I said what he can say in
25 generality. These are the three I've described;

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1 I been stopped many other times over a period of
2 years and collectively this has given me a
3 certain attitude.

4 MR. CHARNEY: And that is exactly what he's
5 already -- he's been asked specifically about
6 those three. He's answered questions about the
7 three, those are the three he would testify to
8 about the specific circumstances at trial.

9 With respect to the others, the City is
10 proposing going through each one, giving him the
11 date, the time, do you remember it. He's already
12 answered no to most of them.

13 JUDGE SCHEINDLIN: Wait, who has the date
14 and time?

15 MR. KUNZ: Well, I --

16 MR. CHARNEY: Hold on, I'm not finished.
17 Sorry, Mr. Kunz. The other piece that hasn't
18 been mentioned is that the City was given records
19 by us of all the Complaints Mr. Lino has filed
20 regarding many of these stops. And many of these
21 CCRB Complaints have been investigated, so the
22 fact that the stop happened is established. We
23 are not, as I mentioned before, we are not
24 contesting for purposes of this trial whether or
25 not those stops were constitutional or not. It's

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1 just the three, so those are the three he will
2 testify specifically about.

3 JUDGE SCHEINDLIN: Well, with respect to the
4 others that you know about, you're not contesting
5 that they were constitutional or
6 unconstitutional? What you are saying?

7 MR. CHARNEY: Mr. Lino will not -- we, first
8 of all, the Plaintiffs will not assert or try to
9 prove that these other 17 or 20 were
10 unconstitutional.

11 JUDGE SCHEINDLIN: That means you're
12 conceding they were constitutional?

13 MR. CHARNEY: No, we are not conceding
14 either way, but we also don't think it's relevant
15 for the purposes of --

16 JUDGE SCHEINDLIN: But if you wanted to say
17 that based on the totality of the number of
18 stops, he has this and this view, I guess there
19 is a question sort of there, that if somebody
20 stops -- let's move away from Mr. Lino. Let's
21 just say a hypothetical drug dealer. So this
22 drug dealer over ten years is stopped and then
23 arrested or whatever and convicted 20 times. I'm
24 sure he has a view about police, too, and I'm
25 sure his view is I don't like these guys because

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1 every time I'm out in the street drug dealing,
2 they stop me. But it doesn't prove much if he's
3 publicly dealing drugs, you know, this
4 hypothetical person. Nobody much would care
5 about his view, he's breaking the law 20 times.
6 So it does decant in a way to know what these
7 stops are about.

8 Now, I don't know Mr. Lino from a hole in
9 the wall. I don't know whether he does, in fact,
10 have convictions; were some of these stops real
11 things like drugs or guns and they were found. I
12 don't know enough, but that can color somebody's
13 view and their view is of little interest if in
14 fact they are breaking the law repeatedly, like a
15 drug dealer on a street corner.

16 MR. CHARNEY: I hear you, but I guess the
17 problem is that he doesn't have any recollection.
18 He already went through --

19 JUDGE SCHEINDLIN: Let's start with this,
20 does he have a criminal record?

21 MR. CHARNEY: He definitely has no felony
22 conviction. He definitely has a couple of
23 arrests, I believe, for misdemeanors.

24 JUDGE SCHEINDLIN: I didn't ask about
25 arrests.

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1 MR. CHARNEY: Definitively, I can say with
2 100 percent certainty, he has no felony
3 convictions of any kind.

4 JUDGE SCHEINDLIN: I heard felony, do you
5 know if he has any convictions?

6 MR. CHARNEY: I'm not sure if he has any
7 misdemeanor convictions for some open container
8 violations, I think, that he may have paid a fine
9 for, but I don't believe he has any convictions
10 for misdemeanor crimes of any kind.

11 JUDGE SCHEINDLIN: Right. Well, that's
12 helpful to see right there, because I think, as I
13 said in my hypothetical, that would color
14 somebody's view of the police, too. So, there
15 has to be some position taken with regard to the
16 17 or the non-three. If you want to introduce
17 that there have been so many, you have to have a
18 general view that, you know, most if not all, in
19 his view, were baseless, that he was just stopped
20 for being there.

21 MR. CHARNEY: I guess the struggle will be
22 if he doesn't really remember the specific facts.

23 JUDGE SCHEINDLIN: That's not a struggle,
24 that's the best he can do. If he doesn't
25 remember, he doesn't remember. But apparently,

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1 if there is a CCRB investigation of them, those
2 records might refresh his recollection.

3 MR. KUNZ: Exactly, Your Honor.

4 MR. CHARNEY: But I guess then how does that
5 play at a trial? Are Defendants going to be
6 allowed to ask him about 20 stops at trial that
7 he is not taking the position were unjustified at
8 this point?

9 JUDGE SCHEINDLIN: Maybe so, because in the
10 hypothetical I gave, and I don't think he's going
11 to meet that hypothetical, if there was some guy
12 standing on a street corner dealing drugs
13 20 times and is stopped 20 times where in plain
14 view he's selling crack, nobody is really
15 interested in his view of the police. It's not
16 as if he's sort of a regular guy trying to come
17 and go or go to work or come home or whatever and
18 he's constantly being stopped. That's the
19 paragon you want to present, that regular
20 people --

21 MR. CHARNEY: Yes. So, I guess short of --

22 JUDGE SCHEINDLIN: I'm sorry, let me finish.
23 The paragon you're trying to present is that
24 regular citizens, regular people in New York,
25 whatever you want to call them, are being

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1 improperly sort of accosted for no basis --

2 MR. CHARNEY: Or an unjustified basis.

3 JUDGE SCHEINDLIN: -- or I guess because of
4 the neighborhood they live in or something and
5 that that's wrong. But if somebody, a
6 hypothetical person, was committing criminal acts
7 in front of everybody and was stopped, that would
8 be a different case and you're not worried,
9 that's not Mr. Lino.

10 MR. CHARNEY: No.

11 JUDGE SCHEINDLIN: I guess everybody has a
12 right to try to find out who Mr. Lino is and
13 whether these stops really are these sort of
14 unjustified and truth at random things or whether
15 folks were seeing him doing bad things and I
16 guess they want to go into that a little bit.

17 MR. CHARNEY: How does that affect whether
18 the three stops that we are specifically alleging
19 are unconstitutional or not?

20 JUDGE SCHEINDLIN: Good point, because you
21 want to put in the totality of the stops coloring
22 his view of the police. You want to say in
23 addition to these three, there is a whole series
24 of over ten years and 20 stops, he has these
25 views. You want to introduce it that way.

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1 MR. CHARNEY: I guess before, because I
2 think you've given me something to think about,
3 if Mr. Lino or if Plaintiffs and Mr. Lino
4 decided, look, I'm only going to testify about
5 these three stops and I'm not even going to
6 mention the fact, not event specifics, but the
7 fact that I've been stopped other times.

8 JUDGE SCHEINDLIN: Right, that's what
9 Mr. Kunz has said. He's not even allowed to have
10 a trial record that there have been 20 or more
11 stops over X number of year period, then that is
12 one thing. It's a tactical decision because
13 there might be something powerful about saying
14 there have been 20 or more stops over five years,
15 but only if you're willing to look at those stops
16 from your point of view, pretty much a pattern of
17 no basis for any of them, really. You may want
18 to put the time in because that's powerful. On
19 the other hand, if you want to forego it, as
20 either Mr. Kunz or Ms. Grossman, I forgot who
21 said it, if you want to just not have anything on
22 the record about years of other stops, just
23 three, then so be it.

24 MR. CHARNEY: Okay.

25 JUDGE SCHEINDLIN: Okay.

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1 MR. CHARNEY: We have one other issue.

2 MS. GROSSMAN: Your Honor, this is Heidi
3 Grossman again.

4 JUDGE SCHEINDLIN: I don't have a record,
5 you know that. I have no Reporter here.

6 MS. GROSSMAN: We do.

7 JUDGE SCHEINDLIN: Oh, you do, right, right.
8 Go ahead.

9 MS. GROSSMAN: Just clarification. We are
10 at a deposition and so we understand that it may
11 not be admissible and but I guess my question is,
12 if we can briefly go through it at the deposition
13 so we don't have to worry about bringing Mr. Lino
14 back. Number two, I do want to remind the Court
15 about its ruling during the January 4th in limine
16 conference which is that when there is an arrest
17 of an individual that he doesn't remember, that
18 that goes to credibility and we are free to
19 discuss --

20 MR. CHARNEY: No.

21 MS. GROSSMAN: -- discuss that, if there are
22 arrests that he doesn't remember. I can point to
23 you --

24 JUDGE SCHEINDLIN: I vaguely remember that.
25 I remember saying something like, you know,

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1 probably, gee, if I were arrested, I'd sure
2 remember that. Being arrested is a traumatic
3 event.

4 MS. GROSSMAN: Right.

5 JUDGE SCHEINDLIN: It would be unlikely if
6 somebody said, gee, I can't remember if I've ever
7 been arrested and it turns out they've been
8 arrested eight times. That would be odd to me.

9 MS. GROSSMAN: Right. We just want to know
10 that whatever it is that Mr. Charney chooses
11 tactically to do or not, that we can still
12 explore those kinds of questions.

13 JUDGE SCHEINDLIN: "Those kinds" meaning has
14 he ever been arrested?

15 MS. GROSSMAN: Right, and do you remember if
16 you've been arrested? I would submit that if
17 there was, I guess, a summons issued, you know,
18 just to know if he remembered or not. We are not
19 going into all the detail.

20 JUDGE SCHEINDLIN: It's a deposition, you
21 can do it. I'm not ruling against that.

22 MS. GROSSMAN: Thank you, Your Honor.

23 MR. CHARNEY: Your Honor, just so the record
24 is clear on this, at this deposition today,
25 Mr. Kunz was asking Mr. Lino questions such as

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1 what Ms. Grossman just mentioned, do you recall
2 receiving a summons?

3 JUDGE SCHEINDLIN: Right.

4 MR. CHARNEY: Mr. Kunz had the summons in
5 front of him, asked the question. Mr. Lino
6 didn't say I didn't recall, but Mr. Kunz then did
7 not show him the summons to try to refresh his
8 recollection.

9 JUDGE SCHEINDLIN: But you are right there,
10 Mr. Charney. Did you say on the record, I would
11 like you to show my client --

12 MR. CHARNEY: I did not because I didn't
13 know he was going to have to answer these
14 questions. But I will do so and say --

15 JUDGE SCHEINDLIN: Yes, then you have a
16 record that they refused to show you a document,
17 right in their hand.

18 MR. CHARNEY: Okay.

19 MS. GROSSMAN: Your Honor, I just want to
20 note that we asked general questions but
21 Mr. Charney objected to and directed his witness
22 not to answer. So, of course, we didn't have an
23 opportunity to even show him.

24 MR. CHARNEY: That's not true.

25 MS. GROSSMAN: Of course, now, with your

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1 ruling, we can certainly proceed and refresh his
2 memory if we need to.

3 JUDGE SCHEINDLIN: Okay, okay. But yes, you
4 are allowed to ask him about arrests and
5 summonses. But I'm not saying right now whether
6 it's admissible, but you're there at the
7 deposition, get it done.

8 MR. CHARNEY: And the last thing, just to
9 make sure --

10 JUDGE SCHEINDLIN: You have to hold on one
11 second, I'm sorry.

12 MR. CHARNEY: Sure.

13 (Whereupon, a short recess was taken from
14 4:17 P.M. until 4:19 P.M.)

15 JUDGE SCHEINDLIN: Sorry, I'm back.
16 Hello?

17 MR. KUNZ: Yes, Your Honor, Morgan Kunz
18 here. So, I think we are clear on this
19 particular issue. There was another direction
20 not to answer that is related to this issue.
21 Mr. Lino is involved in another lawsuit filed by
22 the New York Civil Liberties Union in regard to
23 the alleged presence of his name in a NYPD
24 database.

25 JUDGE SCHEINDLIN: Is that that State Court

C. LINO

1 case?

2 MR. CHARNEY: Yes, the State Court case.

3 MR. KUNZ: That's correct, Your Honor.

4 JUDGE SCHEINDLIN: The one that recently got
5 decided?

6 MR. KUNZ: Yes, there was a recent Appellate
7 Division decision on it.

8 JUDGE SCHEINDLIN: Yes.

9 MR. KUNZ: Right. So, we would like to ask
10 Mr. Lino some questions in regard to that stop
11 and the lawsuit and --

12 JUDGE SCHEINDLIN: Wait, not about the
13 lawsuit. That stop is one thing. We just talked
14 about other stops can be inquired into briefly,
15 not about the lawsuit. I'm not interested -- I
16 mean, I'm very interested in that lawsuit, but
17 not for the purpose of my lawsuit.

18 MR. CHARNEY: Your Honor, can I just
19 interject? Your ruling about asking about other
20 stops is contingent on us, Mr. Lino talking
21 about --

22 JUDGE SCHEINDLIN: Actually, it's not
23 because Ms. Grossman said correctly, we are at
24 the deposition now, we have to get it done. You
25 may make a strategic decision down the road

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1 that's tactical.

2 MR. CHARNEY: What if we represent on the
3 record today --

4 JUDGE SCHEINDLIN: If you're ready to make
5 that decision now, then I think that that's all
6 right. What she's saying is you need to go back
7 and confer and think about it. Everybody is
8 there and Mr. Lino is there.

9 MR. CHARNEY: I agree. I just want to
10 confer with my client, because really, the burden
11 would be on him to have to answer these
12 questions. If we decide today that he will only
13 testify at trial about the three stops and not
14 about --

15 JUDGE SCHEINDLIN: Not anything more about
16 the whole record of all those --

17 MR. CHARNEY: Then he doesn't have to answer
18 any questions about other stops today, correct?

19 JUDGE SCHEINDLIN: Yes, with the one
20 question about arrests and summonses. I will
21 still allow to test his memory about that.

22 MR. CHARNEY: Okay. I guess with respect to
23 this NYCLU stop related to that lawsuit, I've
24 been instructed by his attorney in that case,
25 because we don't represent him in that case, not

C. LINO

1 to let him answer questions because his attorney
2 in that case is not present for this deposition,
3 and that particular stop is not related to the
4 Floyd case.

5 JUDGE SCHEINDLIN: All right.

6 MR. CHARNEY: He had no intention to testify
7 about it.

8 MR. KUNZ: Your Honor, this is Morgan Kunz
9 again. Our perspective on this particular issue
10 is that because that stop has ripened into a
11 lawsuit, we believe it could go towards his
12 potential bias or opinion of police officers and
13 we just want to explore --

14 JUDGE SCHEINDLIN: I can't permit that.
15 Depending what decision Mr. Charney takes, I
16 can't do that. Is that still an active case?

17 MR. CHARNEY: I believe so.

18 MR. KUNZ: Yes, it's my understanding it's
19 an active case. But look, Mr. Lino was noticed
20 to come to today's deposition, so his attorney in
21 that case could have come if he wanted to and he
22 chose not to.

23 MR. CHARNEY: But the notice was sent to me,
24 it wasn't sent to Mr. Dunn.

25 JUDGE SCHEINDLIN: Right, it's related to

C. LINO

1 the Floyd case. I can't open this up to
2 everything that concerns this man. You know, you
3 might ask him about Section 8 Housing money, if
4 he gets it, but that's not my business. There
5 has to be a limitation.

6 MR. KUNZ: Okay.

7 JUDGE SCHEINDLIN: Okay, thank you.

8 MS. GROSSMAN: Your Honor, just one thing,
9 the underlying stop, though, which we should be
10 able to at least explore that because those are
11 facts. It has nothing to do with attorney-client
12 discussions. It's just about what he remembers
13 about the stop --

14 JUDGE SCHEINDLIN: We are not going into
15 other stops that are not at issue here depending
16 on what Mr. Charney decides.

17 MR. CHARNEY: Yeah.

18 MS. GROSSMAN: I would just ask just to give
19 consideration to this one particular stop because
20 it is the subject of another lawsuit.

21 JUDGE SCHEINDLIN: That is exactly precisely
22 why I'm not going there. That suit is not part
23 of my case, it's not part of my case.

24 MS. GROSSMAN: But it does go to his overall
25 view of the police. I know Mr. Kunz said this

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1 and I don't mean to belabor a point that you
2 might have rejected already, but it goes to his
3 overall bias regarding his beliefs, his interests
4 and his motivations behind coming to testify
5 here. So, I'm not looking to spend hours on this
6 but to generally --

7 JUDGE SCHEINDLIN: I don't think you can go
8 into the stop, but you certainly can
9 cross-examine him at trial to whether he's
10 Plaintiff in another lawsuit, to show he's
11 brought another lawsuit and what he's seeking in
12 that lawsuit. That's fair ground, but not the
13 fact of the stop. I'm not going into the stop.
14 That's somebody else's case.

15 MS. GROSSMAN: You know, I guess --

16 JUDGE SCHEINDLIN: Look, Ms. Grossman, I
17 never want to continue arguing after I've ruled.
18 That's my ruling. You can ask him about being a
19 Plaintiff in another lawsuit, but that's it, not
20 the facts of the underlying stop. That's
21 somebody else's case and that's my ruling.

22 MS. GROSSMAN: Your Honor, you made rulings
23 about the police officers, where if there are
24 other incidents whether it's a stop, question and
25 frisk, a suspicionless stop, that we have to turn

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1 that information over.

2 JUDGE SCHEINDLIN: Yes, you do. Their
3 conduct is at issue. I can't go on. I told you
4 what you can do; arrests, summonses, other
5 lawsuits that he's brought, but not the facts of
6 the underlying stop. Okay, I think I have gotten
7 through the issues that you've raised within
8 25 minutes. Thank you.

9 MS. GROSSMAN: Thank you.

10 MR. KUNZ: Thank you, Your Honor.

11 MR. CHARNEY: Thank you, Your Honor.

12 (Whereupon, at 4:25 P.M., the conference
13 call to Judge Shira Scheindlin ended.)

14 MR. CHARNEY: Let me just talk to my client
15 about the question that we need to resolve
16 because we might be able to hopefully end this
17 very soon.

18 (Whereupon, a short recess was taken from
19 4:25 P.M. until 4:36 P.M.)

20 MR. CHARNEY: Mr. Lino and I have discussed
21 it and we have agreed, he has agreed that he will
22 only testify about the three stops that we've
23 already identified at trial and will not testify
24 about not only the facts of any other stops, but
25 the fact that he has been stopped on other

C. LINO

C E R T I F I C A T E

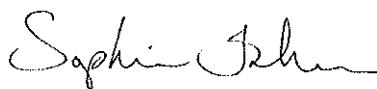
STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

I, SOPHIA TORIBIO, a Notary Public for and
within the State of New York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given by that
witness.

I further certify that I am not related to any
of the parties to this action by blood or by marriage and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 31st day of January 2013.



SOPHIA TORIBIO